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NEWS

Will Billing Rates for Elite Firms Rise More in 2020?

Kirkland & Ellis said it typically increases the hourly rates of its professionals twice a year. But in 2020, routine rate hikes by big firms are not certain, observers said.

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Samantha Stokes

In the midst of a recession, big restructuring law firms such as Kirkland & Ellis and Weil, Gotshal & Manges continue charging premium billing rates—close to $2,000 per partner—months after the firms' regular rate increases.

With another rate increase possibly right around the corner this year, some law firm and restructuring observers say they don't expect many discount pressures or pushback on ballooning rates in bankruptcy court. But rate hikes in 2020 are not a done deal, they add.

Weil said in court filings that the firm typically raises rates once per year, while Kirkland said it typically increases the hourly rate of its professionals twice a year.

Kirkland, which has earned a significant portion of the work so far in large pandemic-era bankruptcies, raised its hourly billing rates Jan. 1, according to court documents filed in the Neiman Marcus bankruptcy. Among others, the firm is also advising JCPenney and Chesapeake Energy in their Chapter 11 cases.

From May 7 to Dec. 31 of last year, Kirkland partners were charging $1,025 to $1,795; counsel were charging $595 to $1,705; and associates were charging $595 to $1,105. Now, both Kirkland partner and counsel rates top out at $1,845—an increase of 2.7% and 5.9%, respectively—while associate hourly rates reach upward of $1,165—a 3.6% increase.

Weil, another bankruptcy powerhouse that is handling the J.Crew and Brooks Brothers bankruptcies, also upped its rates in the last year, according to court documents filed in the J.Crew case.

As of October 2019, partners and counsel are now billing $1,100 to $1,695—the upper rate a 5.9% increase from the previous high of $1,600—while associates are charging $595 to $1,050—the upper rate a 5.5% increase from the previous high of $995 that officially pushed some Weil associates over the $1,000 per hour mark.

For example, in May, partners charged up to $1,695 per hour and associates charged up to $1,050 for work done in the J.Crew bankruptcy, according to the first monthly fee statement.

Akin Gump Strauss Hauer & Feld, another top bankruptcy firm that earned work on the Chesapeake Energy Chapter 11 restructuring, increased some rates in January 2019, according to court documents filed in the ongoing but pre-pandemic Sears bankruptcy.

At the time, the highest partner rates at Akin Gump rose 3.5%, up to $1,755 per hour; highest counsel rates rose 7.2%, up to $1,420 per hour; and highest associate rates rose 5.4%, up to $975 per hour.

According to Akin Gump's 20th monthly fee statement, filed May 30 this year, in the Sears bankruptcy—where it is representing the committee of unsecured creditors—partner, counsel and associate rates are still on par with what the firm charged a year and a half ago.

Overall, if these big firms raised their hourly rates in 2020 just as much as previous years, the partners could be charging up to $1,895 at Kirkland, $1,795 at Weil and $1,815 per hour at Akin Gump, while associates could bill up to $1,205 at Kirkland, $1,110 at Weil and $1,105 an hour at Akin Gump.

Representatives for Kirkland and Weil did not respond to requests for comment about whether they were planning to increase their rates this year, and if so, by how much. An Akin Gump representative declined to comment.

Great Recession Lessons

Restructuring and legal market observers have mixed opinions on whether firms will seek further rate increases this year—and by how much—although all agree that top bankruptcy firms will likely end the year with higher fees than any other given year.

Mark Medice, a law firm management consultant at LawVision who focuses on financial performance and data science, said he doesn't think firms will have an annual adjustment to bankruptcy billing rates in 2020. Citing the Great Recession as an example, he said he didn't see many firms increase their rates at the onset of the recession to capitalize on increased demand for bankruptcy services and that billing rates actually dipped in the years following the recession.

"Demand [for bankruptcy practices] tends to go up when there are downturns, but as a general rule, law firms do not adjust their rates upwards during those times," he said.

In the coming months, he said he believes it's more likely that firms will see higher realization rates and will reduce write-downs. Currently, firms like Kirkland, Weil, Akin Gump and others usually ask for 80% of the total fees they bill every month, according to monthly fee statements.

Lynn LoPucki, a restructuring law professor at UCLA Law, also said rate increases every year aren't a done deal, but if they do occur, there are few stakeholders in bankruptcy court that will keep rate increases in check.

"Nobody's controlling the fees," he said. "If you're a debtor, you're not going to control the fees because you're spending other people's [the creditors'] money."

Some creditors, who are last in line to get paid, may begin objecting to large firm fee applications, he said. A group of vendors, for instance, pushed back in late 2019 on the millions Weil billed in the Sears bankruptcy, but the judge overruled objections.

"There will be creditors that try to push back because the rates are so great, and the response of judges to that is to be to toss them some scraps," LoPucki said. In the bankruptcy of aerospace-parts manufacturer Wellman Dynamics Co., for instance, an Iowa bankruptcy judged in 2017 called Weil's fees "staggering" and cut its multimillion-dollar payment in half, according to the Wall Street Journal. A U.S. trustee found Weil also overbilled mortgage servicer Ditech last year.

While judges are required to review every fee in a Chapter 11 case, LoPucki said he believes they are not inclined to object to rising rates, even during a recession. If bankruptcy judges begin to say no to fee increases, "firms will start taking their cases to different courts," he said, meaning less interesting work for judges as well as fewer filing fee dollars flowing into a jurisdiction.

"Fundamentally, this situation can't change, because if one judge in one city says no to the fees, the cases just go to a different city," LoPucki said. "It's hard to get across what a totally insane system this is."

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